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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,446

02/12/2004

Barend Den Ouden

A78.12-0001

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10/18/2006

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EXAMINER

BORISSOV, IGOR N

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/777,446

Applicant(s)

OUDEN, BAREND DEN

Examiner

Igor Borissov

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All. b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1 and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

#### **Claims 1 and 18.**

The invention does not require physical acts to be performed outside the computer independent of and following the steps to be performed by a programmed computer, where those acts involve the manipulation of tangible physical objects and result in the object having a different physical attribute or structure. See *Diamond v. Diehr*, 450 US at 187, 209 USPQ at 8. The steps of *making data on the energy flow for the first area and the second area accessible* do not impose independent limitations on the scope of the claim beyond those required by the mathematical operation and abstract limitations because the *accessibility* is not actual measured values of physical phenomena. *In re Galnovatch*, 595 F.2d at 41 n.7, 201 USPQ at 145 n.7; *In re Sarker*, 588 F.2d at 1331, 200 USPQ at 135. The steps of *making data ... accessible* have no direct effect on the physical world outside the computer, because the fact that the data is accessible does not indicate a step of *accessing said data*. Thus, the claimed invention merely inputs data into the system and performs a mathematical algorithm without any limitation to a practical application as a result of the algorithm or outcome and is therefore deemed to be non-statutory.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Samuelson (US 2003/0055776).**

Samuelson teaches a computer-implemented method, system, and computer-readable medium for causing a computer to execute said method for regulating the energy flow in an energy network comprising at least a first area and a second area comprising producers and consumers, in which the energy network comprises at least one network connection that limits the transportation capacity of the energy network between said first area and said second area, said method comprises:

**Claims 1, 10, 11, 17, 18 and 27,**

fixing isolated energy prices (IEP4, IEP5) in the first area and in the second area in proportion to the intended energy production by the producers and the intended energy consumption by the consumers [0068]; [0070]; [0205]; [0310]; [0992]; [1669];

adjusting said isolated energy prices (IEP4, IEPS) in said first area and in said second area on the basis of simulated transportation of energy over the network connection and on the basis of the available transportation capacity [0990]; [0991]; [1681];

making data on the energy flow for the first area and the second area accessible to the producers and/or the consumers and/or an operator of the network connection [1681].

**Claims 2-4, 12-14, 16 and 19-21**, See reasoning applied to claims **1, 11 and 18**.

**Claims 5-9, 15 and 22-26**, said method and system, further comprising making available transportation capacity at least partially, wherein rights to transportation capacity are made available by the producers and/or the consumers, and wherein the rights to transportation conditionally made available [0298]; [0300]; [0301]; [0305]; [0362]; [0364]-[0367].


### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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10/11/2006



IGOR N. BORISSOV  
PRIMARY EXAMINER